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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

WAYNE NELSON and **ANTHONY MANOS**, Individually and on behalf of all others similarly situated,

Petitioners,

v.

WILLIAM MURPHY, Acting Director Department of Mental Health and Developmental Disabilities; **ROALDA J. ALDERMAN**, Facility Director, Elgin Mental Health Center; **TERRY BRELJE**, Associate Director for Forensic Services, Department of Mental Health and Developmental Services,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITIONERS' REPLY BRIEF

Mark J. Heyrman
Counsel of Record
Edwin F. Mandel Legal Aid Clinic
of the University of Chicago Law School
and United Charities
6020 South University Avenue
Chicago, Illinois 60637
(312) 702-9611

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WILLIAM MURPHY, Acting Director, Department of Mental Health and Developmental Disabilities; ROALDA J. ALDERMAN, Facility Director, Elgin Mental Health Center; and TERRY BRELJE, Associate Director for Forensic Services, Department of Mental Health and Developmental Disabilities, RESPONDENTS

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ARGUMENT

Petitioners brought this case to challenge the unilateral decision of Respondents to dramatically restrict Petitioners' liberty within a state mental hospital. A divided panel of the Seventh Circuit affirmed a district court decision dismissing Petitioners' claim on Younger abstention grounds. Respondents attempt to describe this decision in a way which minimizes conflict between the Seventh Circuit's holding and decisions of other circuits. They mischaracterize an unrelated proceeding in state court to deny that the Seventh Circuit has greatly expanded the reach of Younger. They rely on that proceeding -- and an inapplicable Illinois statute -- to dispute that the Seventh Circuit's application of Younger threatens federal court jurisdiction

over claims brought by thousands of institutionalized persons. Finally, they deny that the Seventh Circuit's application of Heck v. Humphrey conflicts with that or other decisions by this Court. For the reasons that follow these contentions are legally and factually unsupportable.

I. *YOUNGER* ABSTENTION IS INAPPROPRIATE BECAUSE NO ILLINOIS COURT WAS INVOLVED IN RESPONDENTS' TERMINATION OF PETITIONERS' GROUNDS PASSES.

Respondents argue that Younger abstention is proper in this case because federal jurisdiction would interfere with Illinois state court decisions regarding grounds passes. See Respondents' Brief at 12, 15, 17; Younger v. Harris, 401 U.S. 37 (1971). That argument misstates the facts of the case. Grounds passes were summarily terminated by the unilateral action of

Respondents. No state court ever approved, or had the opportunity to approve, Respondents' decision.

On May 30, 1990, William Murphy, then-Acting Director of the Department of Mental Health and Developmental Disabilities, terminated all grounds passes for approximately 75 patients at the Elgin Mental Health Center, patients who were committed after being found not guilty by reason of insanity (NGRI). A-58.[1] Prior to the termination, those patients, including Petitioners, had been granted unsupervised on-grounds passes. A-53, 56.

In the months following the termination of passes, Respondents recommended that some of these patients be granted new, more limited, grounds

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[1]Citations are to the Appendix to the Petition for Writ of Certiorari.

passes.[2] A-60. These patients were each given a state court hearing on the question of whether new passes should be granted. Respondents disingenuously note that the "Department had scheduled hearings to resolve *the pass issue* that arose after passes were temporarily suspended." Respondents' Brief at 15 (emphasis added). The "pass issue" addressed in those hearings was the appropriateness of new passes proposed by Respondents, not the appropriateness of Respondents' termination of old passes.

No hearings were ever held on the question of whether Respondents' termination of passes was unlawful. Under Illinois law, state courts must

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[2]Grounds passes recommended prior to May, 1990, allowed patients to walk unsupervised on the 80-acre Elgin campus. A-61. New passes were limited to no more than five minutes of unsupervised travel from one building to another. A-60-61.

approve passes recommended by the Department before those passes are granted to NGRI patients. 730 ILCS 5/5-2-4(b). Illinois law does not require the Department to obtain judicial approval in order to terminate patients' grounds passes. Nor did Respondents seek judicial approval of their own accord. Therefore, state "law enforcement policies and furthered enforcement of the Unified Code of [C]orrections" do not justify Younger abstention. See Respondents' Brief at 16.

Petitioners concede that Younger abstention might be applicable had Respondents' termination of grounds passes been litigated in state court. However, Illinois law does not require judicial review of termination of passes, and no such review was ever

held.

Contrary to Respondents' suggestion, Harris v. Pernsley, 755 F.2d 338 (3rd Cir. 1985), reh'g denied, 758 F.2d 83, cert. denied, 474 U.S. 965 (1985), cannot be distinguished on the grounds that Respondents have a substantial interest in state court adjudication. See Respondents' Brief at 15-16. As in Harris, the Respondents are not "plaintiffs or prosecutors seeking vindication of state law enforcement policies," see 755 F.2d at 344. Respondents have instigated no litigation in any state court seeking vindication of any state policy concerning the termination of Petitioners' passes.

Nor can Harris be distinguished on the grounds that "the state court action [in Harris] was not a criminal

proceeding." Respondents' Brief at 15. Despite the suggestion of Respondents, see Respondents' Brief at 13-14, 16, and the Seventh Circuit, see Nelson v. Murphy, 44 F.3d 497, 501 (1995)("cases pending in the courts of Illinois are continuations of the original criminal prosecutions"), proceedings to determine the treatment of NGRIs are not criminal in nature. NGRIs are civilly confined by the same procedures as all other involuntarily-committed patients. 730 ILCS 5/5-2-4(b). Respondents have not contested that Illinois has disavowed any intention to treat judicial supervision of NGRIs as a "criminal proceeding." See Petition for Certiorari at 31-32.

The nature of the state court proceedings demonstrates why granting relief to Petitioners would not result

in federal intrusion in state court proceedings. Respondents argue that success on Petitioners' claims would result in federal court "interfer[ence] with the state courts' ongoing statutory duty and authority." Respondents' Brief at 17 (distinguishing Hanna v. Toner, 630 F.2d 442 (6th Cir. 1980), cert. denied, 450 U.S. 919 (1981)). However, no state court, whether before or after the filing of Petitioners' claims, ever addressed the appropriateness of Respondents' termination of passes. Nor did any state court have a statutory duty to do so. A federal court decision regarding Petitioners' claims would not, therefore, interfere with the state courts. Indeed, if Respondents wished to give back the pre-May 1990 grounds passes to Petitioners at this date, they could do so without returning to state

court. State court approval of those passes has never been revoked.

Finally, the nature of the state court proceedings demonstrates why Respondents' argument is tantamount to an exhaustion requirement for § 1983. Respondents assert repeatedly that Petitioners should have brought their § 1983 claims in state court proceedings. Respondents' Brief at 18-22. In order for the state courts to address whether Respondents' termination of grounds passes was unconstitutional, however, Petitioners would have been required to bring their constitutional claims in that forum.[3] They could not have functioned as a defense to any

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[3]Respondents quite rightly note that "Petitioners have failed to ever argue that they did not have the opportunity to raise their constitutional challenges" in state court. Respondents' Brief at 22. Petitioners would not dispute that the Supremacy Clause requires state courts to entertain § 1983 actions. See Howlett v. Rose, 496 U.S. 356, 380 (1990).

"prosecution" by the state, since Respondents never litigated the termination of passes in state court. This Court has emphasized that the availability of an alternate forum is not grounds for Younger abstention. Felder v. Casey, 487 U.S. 131 (1988); Patsy v. Board of Regents, 457 U.S. 496 (1982). Respondents' proposed rule would vitiate that long-standing principle.

II. THE SEVENTH CIRCUIT'S DECISION WILL HAVE WIDESPREAD IMPACT BECAUSE STATE COURT SUPERVISION IN THIS CASE IS IDENTICAL TO STATE COURT SUPERVISION OVER THOUSANDS OF INSTITUTIONALIZED MENTAL PATIENTS.

Respondents attempt to distinguish the state courts' supervision over Petitioners from state court supervision over thousands of institutionalized persons in Illinois and other states. Respondents' Brief at 22-23. Respondents assert that this case arises

in a "narrow factual context" in which the state court involvement is different from the judicial supervision provided to all involuntarily-committed person in Illinois. Id. That assertion is erroneous.

If Respondents argue that the "significant state interest" in state court jurisdiction over this case arises from judicial supervision over the treatment plans of NGRI patients, their argument encompasses all involuntarily committed patients in Illinois. Illinois law provides for state court supervision of the treatment plans of NGRI patients. That supervision, however, is identical to the supervision given to every involuntarily committed patient. See 730 ILCS 5/5-2-4(b)(treatment "shall be under the Mental Health and Developmental

Disabilities Code"); 405 ILCS 5/3-814 (providing for judicial supervision and review of treatment plans for involuntarily committed patients). Were such judicial supervision the basis for Younger abstention, all patients involuntarily committed would be barred from bringing their conditions of confinement claims in federal court.

If Respondents' distinction rests on state court supervision over grounds passes of NGRI patients, it is factually irrelevant. Illinois does provide for state court approval prior to the granting of grounds passes to NGRI patients. 730 ILCS 5/5-2-4(b). However, Illinois law provides for no judicial supervision of termination of passes. Because Petitioners' claims challenge the termination of passes, rather than their granting, the

statutory provision invoked by Respondents cannot be a basis for distinction in this case.

Moreover, the argument that state court jurisdiction over a particular aspect of treatment justifies Younger abstention would affect thousands of civilly committed patients. Many states require judicial approval prior to particular forms of treatment. For example, Illinois -- like many other states -- requires judicial approval prior to administration of psychotropic medication to mental patients incapable of giving consent. 405 ILCS 5/2-107.1; see also Alaska Stat. § 47.30.839 (1995); N.Y. Mental Hyg. Law § 9.61(c)(2) (McKinney 1995); Okla. Stat. Ann. tit. 43A, § 5-401(B)(8) (West 1995); S.D. Codified Laws Ann. § 27A-12-3.15 (1995). Under Respondents'

argument, a patient who was forcibly administered medication without judicial approval would be barred from challenging the state's action in federal court despite the fact that this Court has ruled unanimously that patients have a constitutional right not to be subjected to involuntary medication. Washington v. Harper, 494 U.S. 210 (1990). That result sharply conflicts with Congressional intent that § 1983 provide a federal forum for constitutional claims.

III. THE SEVENTH CIRCUIT'S DECISION DEEPENS A SPLIT AMONG THE COURTS OF APPEALS ABOUT WHETHER *YOUNGER* IS APPLICABLE TO CLAIMS FOR MONETARY DAMAGES.

Respondents deny that the Seventh Circuit extended the holding of Heck v. Humphrey, ___ U.S. ___, 114 S. Ct. 2364 (1994). Respondents' Brief at 24. Respondents argue that the dismissal of

Petitioners' damages claims were based solely on Younger. Id. Although Petitioners disagree with Respondents' characterization of the Seventh Circuit's holding, Respondents' interpretation points to a compelling additional basis for granting certiorari. Application of Younger to damages claims is an issue on which the circuits are sharply divided, and one which this Court has heretofore declined to consider.

This Court has explicitly left open the question of whether Younger abstention applies to damages claims. Deakins v. Monaghan, 484 U.S. 193, 201 (1988); Juidice v. Vail, 430 U.S. 327, 339 n. 16 (1977). The Courts of Appeals are split on the issue. The Fifth Circuit applies a per se rule that claims for monetary damages do not fall

within the purview of Younger. See Alexander v. Ieyoub, 62 F.3d 709, 713 (5th Cir. 1995); Lewis v. Beddingfield, 20 F.3d 123, 125 (5th Cir. 1994); Allen v. Louisiana State Bd. of Dentistry, 835 F.2d 100, 104 (5th Cir. 1988). Both the Sixth and Ninth Circuits, in contrast, abstain under Younger where the action for damages would interfere with or implicate the outcome of pending state proceedings. See Feaster v. Miksch, 846 F.2d 21, 22-23 (6th Cir.), cert. denied, 488 U.S. 857 (1988); Mann v. Jett, 781 F.2d 1448, 1449 (9th Cir. 1986). After noting conflicting approaches, the Fourth Circuit has held that Younger does not invariably require dismissal of damages claims. Suggs v. Mebane, 804 F.2d 274, 279 (4th Cir. 1986). The Tenth Circuit has similarly acknowledged the split in authority, and concluded

that -- although Younger may require abstention on damages claims in some circumstances -- dismissal is not required when those claims cannot be redressed in the pending state proceeding. Myers v. Garff, 876 F.2d 79, 81 (10th Cir. 1989).[4] Although the Eighth Circuit has not opined on the application of Younger to damages claims generally, it has held that "the principles of comity embodied in Younger also require the dismissal of . . . damages claims" when the "damage claims

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[4]As discussed, there was no proceeding in which the state court considered the propriety of the Department's termination of passes. Thus, the rule applied by the Sixth, Ninth, and Tenth Circuits would not bar Petitioners' damages claims. However, if the Seventh Circuit's holding is read to mean that Petitioners' damages claims are barred by their failure to initiate proceedings in the state court, see 44 F.3d at 501 ("Either plaintiff could have opposed the implementation of the new plan on constitutional grounds--or on the ground that the change in the pass policy violated the orders approving earlier treatment plans and thus constituted contempt of court."), then it is in conflict with every other opinion on this issue.

and . . . equitable claims are inextricably intertwined." Caldwell v. Camp, 594 F.2d 705, 708 (8th Cir. 1979).

Therefore, if Respondents are correct in arguing that Petitioners' damages claims were dismissed under Younger, rather than Heck, the Seventh Circuit's opinion further deepens the conflict between the Courts of Appeals and presents an important issue to be resolved by this Court.

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully Submitted,

MARK J. HEYRMAN

Counsel of Record

Edwin F. Mandel Legal Aid Clinic
University of Chicago Law School
6020 South University Avenue
Chicago, Illinois 60637-2786
(312) 702-9611
*Counsel for Petitioners**

* Counsel gratefully acknowledges the assistance of Karen Kremer-Mahoney '96, Bettina Neuefeind '96, and Sharon Swingle '96, students at the University of Chicago, in the preparation of this response.